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A.A.A. LITIGATION DURING THE YEAR 1934.

A survey of this litigation in the courts during the year 1934 discloses the following interesting and outstanding facts:

1. The court decisions involving the licensing section (Section 8 (3) of the A.A.A.) have, with two exceptions, been based upon the question of interstate commerce under the statute; these two exceptions, as noted below, were decisions with respect to constitutionality.

2. There has been no decision by any circuit court of appeals (and of course not by the Supreme Court of the United States) on the constitutionality of any section of the A.A.A. statute.

3. In the lower courts there has been one decision upholding the constitutionality of the processing tax sections of the Act; and this case represents the only challenge to these sections.

4. There has been one case upholding the constitutionality of the so-called Sugar Act (which is part of the A.A.A. statute); and this is the only challenge to the Sugar Act made in the courts.

5. There have been only two lower court decisions on the constitutionality of section 8 (3) (the licensing section): One in Florida by the lower federal court holding the entire Act unconstitutional, which was reversed by the circuit court of appeals (5th circuit) upon the ground that the question of constitutionality was not, upon that record, properly before the lower court; the other was a decision by a lower federal court in Chicago upholding the constitutionality of section 8 (3) and the Chicago Milk License (from which decision no appeal was taken).

6. Of the seventeen cases in which the validity of licenses issued under section 8 (3) of the Act was challenged (either offensively or defensively) only two cases went to a final decree.

7. Thus far all of the other decisions, in cases involving licenses issued under section 8 (3) of the Act, were rendered in granting or refusing preliminary injunctions.

8. The only serious setback sustained by the Government was in seven decisions involving the validity of milk licenses on the question of interstate commerce which were decided between July, 1934, and November 16, 1934. In all of these seven cases the lower federal courts held on the record in each of the cases respectively that the federal government had no right to regulate the dairies in these cases. However, it is important to note

(a) that each of the dairies involved purchased and sold all of their milk within the same state, (b) that practically no fluid milk was shipped into the Sales Areas involved (in which the dairy did business) from another state--in other words, there was no interstate commerce in fluid milk. In each of these seven cases the Government sought to justify the legality of the federal regulation of fluid milk in these seven Sales Areas upon the sole ground that dairy products (butter, cheese, etc.) were and are being transported in great quantities in interstate commerce throughout the country; that the price received by producers for their fluid milk in these markets is so interrelated with the price of these products which move in interstate commerce that the price of the former substantially affects the price and movements of dairy products in interstate commerce, and hence federal regulation of the purchase of fluid milk from the producer for consumption in these Sales Areas is legally justified. This contention of the Government was overruled by the lower courts in these seven markets. This theory of the Government is still somewhat novel and less familiar to the courts. In three of these cases appeals have been taken to the circuit court of appeals.

In one of the seven cases (the Baltimore case) the lower federal court held that the Baltimore Milk License was not authorized by section 8 (3) of the Act because it, in effect, contained a marketing plan instead of being limited merely to matters which may be referred to as "unfair practices or charges".

9. In order accurately to appraise the trends of judicial decisions in A.A.A. litigation, the theory of the Government in these seven cases should be sharply and clearly distinguished from the theory of the Government in markets like Chicago and Boston, for example. In these latter markets the theory of the Government is briefly as follows: That in excess of 40% of the milk consumed in these milk sheds is produced outside of the state; that in order for the federal government to effectively regulate the interstate milk, it is necessary to regulate the milk produced and sold within each milk shed respectively.

This contention of the Government was presented to the federal courts in Chicago in three cases. In the first case a judge of the lower federal court sustained the theory and upheld the Chicago License. The other two Chicago cases were both decided by another judge who held the theory, and the facts supporting this theory, immaterial upon the ground that the Chicago Milk License was a regulation of production of milk, and hence could not be interstate commerce. In the case decided favorable to the Government no appeal was taken. In the other two cases, the Government has taken appeals.

Nature of Each Case

1. Ewa Plantation Company, et al, v. Henry A. Wallace, S.C. Dist. Col., Oct., 1934.

In this case thirty-seven companies producing and processing Hawaiian sugarcane brought suit in the Supreme Court of the District of Columbia for an injunction restraining the Secretary of Agriculture from carrying into effect the provisions of the Jones-Costigan Amendment to the Agricultural Adjustment Act and the Sugar Quota Regulations issued by the Secretary. The complainants contended that they had been discriminated against both under the provisions of the Amendment and by the Sugar Regulations. The court in its decision sustained the validity of the Amendment and upheld the action taken by the Secretary in determining the quotas for the sugar-producing areas. The court also held that the complaining companies had not only failed to prove any financial damage resulting from the Amendment and the Secretary's action, but that they stand to gain by the enforcement of the Act as amended. The final decree dismissing the bill of complaint is in process of being entered and it is understood that the complainants intend to appeal the case to the United States Supreme Court.

2. Franklin Process Co. v. Hoosac Mills Corp., D.C. Mass. Eq. No. 3926, Oct. 19, 1934.

In this case a claim filed with the receivers by the United States for cotton floor stocks tax and cotton processing tax assessed under the A.A.A. was contested by the receivers on constitutional grounds. The Court held the claim to be valid and held as follows: The floor stocks taxes and processing taxes are proper excises and meet the requirement of uniformity; the Act is a genuine revenue measure and the proceeds of the taxes are appropriated for constitutional purposes; the Act is not class legislation; the provisions of the Act authorizing the Secretary to determine when a production adjustment program will begin and to determine, from the standards prescribed in the Act, rates of tax, do not unlawfully delegate legislative power to an administrative officer; the Act does not constitute an unlawful attempt to legislate within the field of State powers and outside the powers granted to Congress by the Constitution; the Act was an emergency measure and as such it must be treated; there is no denial of due process. An appeal is being taken from the final decree.

3. Therrell v. Wallace, et al, D.C.S.D., Miss., Nov. 20, 1934.

A cotton grower brought suit against the Secretary of Agriculture, various officials administering the Bankhead Act, the

United States Attorney and the Collector of Internal Revenue, to obtain a declaratory judgment adjudicating unconstitutionality of the Bankhead Act. The court dismissed the bill as to the Secretary of Agriculture and the administrative officials, holding that jurisdiction could not be obtained over the Secretary out of the district of his residence without his consent, and that the administrative officials were not proper parties in the case in the absence of the Secretary. The court held that the Secretary was not an indispensable party to the suit against the United States Attorney and the Collector, and directed plaintiff to file an amended bill against them alleging further facts, the original bill being insufficient. The case is pending.

4. United States v. Shissler, et al, D.C.N.D. Ill., April, 1934 (Holly, D.J.)

The two defendant dairies having violated the price and other provisions of the Chicago Milk License issued by the Secretary of Agriculture under the authority vested in him by the Agricultural Adjustment Act, their licenses were revoked after a hearing by the Secretary. The defendants continued in business. Thereupon the Government filed a bill for injunction. After a hearing upon a preliminary injunction, the court upheld the constitutionality of Section 8 (3) of the Agricultural Adjustment Act, and held the Chicago Milk License to be valid and entered a preliminary injunction against the two dairies. No appeal was taken from the injunction.

5. Hillsborough Packing Company, et al, v. Wallace, D.C.S.D. of Fla., Jan. 30, 1934.

A preliminary injunction was issued against the members of the Florida Control Committee, acting under a marketing agreement and license for citrus fruit grown in Florida, both executed pursuant to the Agricultural Adjustment Act. The Committee was restrained from interfering with shipments by a shipper who had signed and a grower who had not signed an agreement, and from enforcing any regulation or agreement entered into pursuant to the Act. The court in its opinion held that the Agricultural Adjustment Act was unconstitutional and the License void.

6. Yarnell, et al, v. Hillsborough Packing Company, C.C.A. 5, Equity No. 7309, April 14, 1934.

In this case a circuit court of appeals upon an appeal from the preliminary injunction issued by the district court reversed the injunction and held that the constitutionality of neither the statute nor the license was properly presented to the lower court, and hence could not have been passed upon by the lower court. The court further held that an injunction

does not lie merely because an act is unconstitutional; and one seeking such relief must show further that he is entitled to it on some clear ground of equity jurisdiction. Such ground was not shown here for one petitioner was a voluntary party to a valid agreement, and the other one could secure an injunction against a committee having no power to enforce its orders. Thus the C.C.A. did not pass on the constitutionality of any part of the Agricultural Adjustment Act.

7. Edgewater Dairy Company v. Wallace, et al, D.C.N.D. Ill., Equ. No. 13878, June 26, 1934 (Barnes, D.J.).

In this case six dairies applied for a preliminary injunction against the enforcement of the Chicago Milk License, and the Government filed its cross bill asking for an injunction against the six dairies from violating the terms and conditions of the Chicago Milk License.

The court did not pass upon the constitutionality of the statute, but held the Chicago Milk License to be void because, in its opinion, the Chicago Milk License was an attempt by the Federal Government to regulate the production of milk, and that the production of milk is not interstate commerce. The district court granted the preliminary injunction in favor of the six dairies against the Government's enforcing the Chicago Milk License and overruled the application of the Government for its injunction against the dairies. The facts showed that the dairies produced and sold all of their milk in the State of Illinois, but the facts introduced by the Government showed that 40% of all milk consumed in the Chicago Area was produced outside of the State of Illinois and shipped into Illinois and consumed in the Chicago Sales Area. There were further facts introduced by the Government upon which it rested its contention that the entire Chicago Market was in the current of interstate commerce.

From the decision of the district court granting the injunction, the Government has taken an appeal to the C.C.A. for the 7th circuit, which is now pending.

8. Columbus Milk Producers Cooperative Association, et al, v. Henry A. Wallace, et al, D.C.N.D. Ill., Eq. No. 13985, Nov. 26, 1934.

In this case the Columbus Milk Producers Cooperative Association, together with its member producers of milk, being Wisconsin producers of milk, and the Meadowmoor Dairies, Inc., being a distributor of milk, filed their bill for an injunction against the enforcement of the Chicago Milk License. The Government asked the court to enter a preliminary injunction against

the Association and the Meadowmoor Dairies, Inc., enjoining them from violating the terms and conditions of the Chicago Milk License. The court did not pass on the question of the constitutionality of the Agricultural Adjustment statute or the Chicago Milk License. The court followed its own decision in the Edgewater case, and held the Chicago Milk License to be an attempt to regulate production, and hence was not interstate commerce and was therefore void. The court accordingly held that the Government's contentions (1) that the plaintiff-association and the Meadowmoor Dairies, Inc., were engaged in interstate commerce and (2) that the Chicago Milk Market was in the current of interstate commerce were both immaterial in the light of his construction of the Chicago Milk License. The court agreed with Government's contention (1) but did not agree with contention (2).

There was a final hearing on the merits, and the court entered a final decree granting the injunction in favor of the dairies and denying the injunction requested by the Government. From this final decision the Government has taken its appeal to the Circuit Court of Appeals for the 7th Circuit.

9. United States v. Neuendorf, et al., D.C.S.D. Ia., Oct. 19, 1934.

In this case the Government sought to enjoin a dairy operating in Des Moines, Iowa, from continuing in business after the revocation of its license under the Milk License for the Des Moines Area. The Government's application for a preliminary injunction was denied on the ground that all the milk handled by the dairy was both produced and distributed within the State of Iowa, and that hence it was not in the current of interstate commerce. The court, therefore, held that the plaintiffs were not subject to the Des Moines Milk License.

10. United States v. Greenwood Dairy Farms, Inc., D.C.S.D. Ind., September 27, 1934.

In this case the Government filed a bill to enjoin a dairy operating in Indianapolis, Indiana, from continuing to distribute milk after the revocation of its license under the Milk License issued for the Indianapolis Area. The case was submitted to the court for a final decree on affidavits and an agreed statement of facts. The court refused to grant the Government an injunction on the ground that all the milk handled by the dairy was both produced and distributed in Indiana, and that since the milk handled by the dairy was not in the current of interstate commerce, it was not bound by the Indianapolis Milk License.

11. and 12. Hill v. Darger, D.C.S.D. Cal., Sept. 7, 1934, and Kurtz v. Berdie, D.C.S.D. Cal., Sept.7, 1934.

In Hill v. Darger the plaintiffs were Los Angeles dairies who sought to enjoin the holding of an administrative hearing to take evidence of alleged violations by the dairies of the Los Angeles

Milk License. In Kurtz v. Berdie the plaintiffs were Los Angeles dairies whose licenses had been revoked by the Secretary of Agriculture. They sought to enjoin the United States Attorney and others from enforcing against them the penalties provided by the Act for doing business without a license. Both cases were heard before Judge Cosgrave, who granted the plaintiffs preliminary injunctions on the theory that these dairies were not subject to the Los Angeles License because none of the milk which they handled moved in interstate commerce. These two cases are now pending on appeal before the Circuit Court of Appeals for the Ninth Circuit.

13. Douglas v. Wallace, D.C.W.D. Okla., October 17, 1934.

In this case a bill was filed by several producers in the Oklahoma City Market to enjoin the enforcement of the Oklahoma City Milk License. It appeared that the plaintiffs produced all of their milk in Oklahoma and that all of its was distributed within that state. Judge Vaught held the Oklahoma City Milk License unconstitutional on the ground that it was an unwarranted regulation of intrastate business.

14. Royal Farms Dairy v. Henry A. Wallace, et al, D.C.D. Md., Nov. 16, 1934.

In this case a bill in equity was filed by a Baltimore dairy to enjoin enforcement against it of the Baltimore Milk License. After a trial on the merits, Judge Chesnut granted the dairy a permanent injunction. The dairy distributed only milk produced in Maryland and because of this fact the court held that the milk it handled was not in the current of interstate commerce and that, therefore, the Baltimore Milk License could not be applied to it. The court also held that the Baltimore Milk License was invalid because its provisions were not necessary to eliminate unfair charges or practices existing in the Baltimore Market which tend to prevent the effectuation of the policy of the Agricultural Adjustment Act.

In all of the cases discussed above, (with the exception of the Columbus Case) it appeared that none of the milk handled by the dairies actually moved in interstate commerce. In the milk markets involved in these cases practically no fluid milk comes into the markets from other states, nor is any of the milk produced in these market areas transported out of the respective states in which they are located. The licensing of such milk markets as these under the Agricultural Adjustment Act is based on the theory that the price received by producers for their fluid milk in these markets is so interrelated with the price of butter, cheese, and other dairy products which move in interstate commerce, that the price of the former substantially affects the price and movements of dairy products in interstate commerce, and hence federal regulation of the purchase of fluid milk from the producer for consumption in these milk sheds is legally justified. This proposition was considered by the courts which decided the cases discussed above but it was held untenable, in most cases, on the ground that the effect which fluid milk prices in such markets have upon the interstate movement of dairy products is too indirect to be subject to regulation by the Federal Government.

15. Mellwood Dairy, et al, v. Sparks, D.C.W.D. Ky., July 2, 1134.

In this case thirteen dairies distributing milk in Louisville, Kentucky, filed a bill in equity to enjoin the United States Attorney from enforcing the Louisville Milk License against them. The court granted the dairies a preliminary injunction without rendering any opinion. The preliminary injunction was granted apparently on the theory that the Louisville Milk License was not applicable to these dairies because they were not engaged in interstate commerce. An appeal from the decision of the district court is now pending before the Circuit Court of Appeals for the Sixth Circuir.

16. Black, et al, v. Little, et al, D.C.E.D. Mich., November, 1934.

In this case a bill in equity was filed by several dairies operating in the cities of Flint, Bay City, and Saginaw, Michigan, against the United States Attorney and the Market Administrator of the Milk License for this area. The plaintiffs sought to have the defendants enjoined from enforcing the Milk License against them. The District Court refused to grant the dairies a preliminary injunction. The court also denied the defendants' motion to dismiss the bill of complaint and held the case for trial as a suit for a declaratory judgment as to the validity of the Milk License and the Agricultural Adjustment Act.

17. Mefferd, et al, v. Hunter, et al, and U.S. v. Mefferd, D.C.S.D. Cal., Oct. 18, 1934, Eq. No. 374-C and 399-C (Cosgrave, D.J.).

Upon a consolidated hearing of these two cases, the court held that a temporary restraining order should issue enjoining the federal officials from enforcing the License in respect to shipments of citrus fruit within the state. As to shipments outside of the state, the court held the evidence was in such a condition that judicial action should be withheld until final hearing.

18. U.S. v. Dwyer, D.C. Mass.

The defendant dairy, having violated the Boston Milk License, the Secretary of Agriculture, after an administrative hearing, did, pursuant to the statute, revoke the license of the dairy. The dairy continued to do business; whereupon the Government filed its bill for injunction in the federal court, and upon an application for a preliminary injunction the court restrained the dairy from doing an interstate business in milk pending the final determination of the merits of the case. The case has not yet been tried. No opinion was rendered.

19. U.S. v. Dixie Rice Mill, Inc., D.C.W.D. La., July 30, 1934.

A bill was filed to require the performance by the Dixie Rice Mill, Inc., of the terms of a marketing agreement, issued pursuant to Section 8 (2) of the Agricultural Adjustment statute, between it and other rice millers located in the States of Louisiana, Texas, Arkansas and Tennessee and the Secretary of Agriculture. The defendant moved to dismiss the bill, but the court denied the motion and sustained the bill, stating in its opinion:

> "The very nature and scope of the plan to aid the rice industry along with other branches of agriculture in the act of Congress was such that the consequences of the failure of one party to the agreement to comply with it would be so far reaching that nothing short of specific performance, in my opinion, would adequately meet the situation. I don't think the percentage of the volume of the business done by the defendant makes any difference. The scheme is one which seems to require the unanimous and good faith participation by the members of the industry; otherwise the failue of one encourages others to do likewise and discourages those who honestly try to live up to it, which would ultimately tend to lead to a collapse of the entire plan".

Thereafter a decree was entered on consent of all parties, granting the relief asked for by the Government.

20. California Canning Peach Growers v. Myers, D.C.N.D. Cal., Nov. 13, 1934.

The plaintiff, being a canner of peaches, filed a bill in the federal court to enjoin the officer appointed by the Secretary, from proceeding in an administrative hearing, to determine whether the plaintiff's license should be suspended or revoked. The plaintiff had signed a marketing agreement with the Secretary of Agriculture pursuant to Section 8 (2) of the Act. The plaintiff sought to "surrender its license", and thus urged this as a basis for the injunction. The court denied the injunction and dismissed the bill. There was no question of constitutionality raised in this case.

N.R.A. Cases Involving Codes Which Are Jointly Administered With The A.A.A.

1. United States v. Joseph Schechter, et al, D.C.E.D. New York, August 28, 1934.

In this case the constitutionality of the National Industrial Recovery Act and the valididty of the Code of Fair Competition for the Live Poultry Industry, Metropolitan Area of New York City, were in

issue. The action was a criminal prosecution in which there were six defendants and was based upon an indictment in which the Grand Jury found that the defendants had conspired to violate the National Industrial Recovery Act and had committed numerous violations of the Code. Upon demurrer to the indictment, Judge Marcus B. Campbell (District Judge for the Eastern District of New York) upheld the National Industrial Recovery Act and the Code. The jury found the defendants guilty on nineteen of the thirty-three separate counts submitted to it. Substantial fines were imposed against all of the defendants and sentences of imprisonment given the four individual defendants. The case is now in the process of being appealed to the Circuit Court of Appeals.

2. United States v. Ross R. Salmon, et al, D.C.W.D. Mo., Equity No. 12613, July 23, 1934.

Indictment for violation of the Code of Fair Competition for the Commercial and Breeder Hatchery Industry through false and deceptive advertising and by substitution of chicks on sales where special qualities were advertised. All three defendants pleaded guilty on both counts and paid fines assessed by the court.

3. United States v. Aurora Serum Co., D.C.N.D. Ill., Equity No. 14080, September 27, 1934.

Suit by the Government for injunction to prevent defendant corporation for violating the provision of the Code of Fair Competition for the Anti-Hog-Cholera Serum and Hog-Cholera Virus Industry by selling serum at less than its schedule of prices filed with the code authority. The prospective purchaser was also made a party to the suit. The court issued a preliminary injunction against the corporation prohibiting such sale. The case is pending for determination upon final hearing.

ADDITIONAL PENDING CASES.

In addition to the foregoing cases in which opinions have been rendered or other action taken, a number of cases are now pending in which no action has as yet been taken by the courts.

(1). A group of tobacco growers have filed a bill of complaint for a declaratory judgment in the Federal District Court for the Eastern District of Kentucky seeking to have the Kerr-Smith Tobacco Act declared unconstitutional.

(2). The Government has filed proceedings to restrain violations of the following licenses with respect to which no enforcement proceedings have heretofore been instituted: License for Southern Rice Millers, License for Handlers of Northwest Fresh Deciduous Tree Fruit, and License for Milk--St. Louis Sales Area.

(3) Three cases have been filed by the Government to enjoin violations of the Boston Milk License, in addition to the case of U.S. v. Dwyer noted above.

(4) A second suit seeking to enjoin a violation of the Code of Fair Competition for the Commercial and Breeder Hatchery Industry has likewise been instituted.

(5) Bills of complaint brought by milk distributors seeking to enjoin the enforcement of milk licenses issued by the Secretary of Agriculture for the Lexington, Kentucky, and Southern Illinois Sales Areas are also pending.